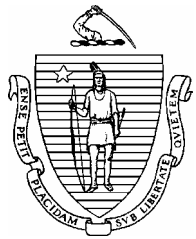


# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 717

IN THE MATTER  
OF  
KEVIN JOYCE

## DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Kevin Joyce pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 31, 2004, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Joyce. The Commission has concluded its inquiry and, on November 4, 2004, found reasonable cause to believe that Joyce violated G.L. c. 268A.

The Commission and Joyce now agree to the following findings of fact and conclusions of law:

### **-Findings of Fact-**

1. During all times relevant, Joyce, an attorney, was the Boston Inspectional Services Department ("ISD") Commissioner, appointed to that position in 1998.
2. The ISD administers the public health, safety and land use code for the City of Boston ("City"). The ISD has over 200 employees. As Commissioner of ISD, Joyce had authority over the management of personnel in that department.
3. Julie Fothergill was an ISD Principal Administrative Assistant until her termination on May 23, 2001. Fothergill first worked for Joyce in the City law department. After Joyce became ISD Commissioner, he hired Fothergill as his assistant in September 1998. During her tenure with the ISD, Fothergill was a member of Joyce's senior management team. She worked directly under Joyce as his advisor, and Joyce consulted with her on almost all of the official decisions that he made as commissioner.
4. Melissa Fetzer worked for the City as a Senior Intranet Developer/Systems Analyst between 1992 and 1999. In that capacity, she developed the City's Intranet site and assisted in developing the City's Internet website. In 1999, Fetzer became an employee of TekInsight.com, Inc. ("TekInsight"), a private Internet development firm providing technology and management solutions to the state and local government sector, including the City.

5. Joyce and Fetzer became friendly during the course of Fetzer's work for the City. Fetzer also had a personal connection with Joyce through her then boyfriend, ISD Assistant Commissioner John Dorsey. Dorsey and Joyce were close friends. In or about the late 1990s and into 2000, Fetzer and Dorsey vacationed with Joyce and others at Joyce's New Hampshire ski house.

6. As of 2000, the City Purchasing Department ("Purchasing") had a \$9 million contract with TekInsight under which TekInsight was providing computer consulting services to various City of Boston departments and agencies, including ISD. Joyce had no involvement in the procurement of this contract. ISD staff, including Joyce, believed that they could utilize this contract for ISD computer projects.

7. At the time, ISD ran a website called the *mayorsfoodcourt*, which updated the public on the current health department status of restaurants in the city. During summer 2000, ISD determined that the *mayorsfoodcourt* website required upgrade work. TekInsight was selected to perform the work. In turn, TekInsight assigned Fetzer to the job.

8. During fall 2000, Fetzer performed some portion of the *mayorsfoodcourt* upgrade work.

9. During fall 2000, Fothergill attempted to secure funding for the *mayorsfoodcourt* upgrade.

10. On December 6, 2000, Fetzer submitted to Fothergill a \$7,900 "service report"<sup>1</sup> for payment for work she did on the *mayorsfoodcourt* upgrade.

11. On or about December 6, 2000, Fothergill talked by telephone with Purchasing Department Director William Hannon. Hannon stated that he would not allow the \$9 million technology contract to be used to fund ISD's computer projects, including the *mayorsfoodcourt* upgrade.

12. On or about December 8, 2000, Joyce and Fothergill met with Hannon at City Hall to discuss the funding issue. Hannon told Joyce and Fothergill that ISD could not use the \$9 million purchasing contract to cover certain projects including the *mayorsfoodcourt* upgrade. Rather, Hannon, who was not aware at this meeting that the work on the *mayorsfoodcourt* upgrade had already been started, said that those projects would have to be publicly bid.

13. After their meeting with Hannon, Fothergill and Joyce drove back to the ISD office together. Fothergill expressed extreme concern over the *mayorsfoodcourt* upgrade situation. Joyce told Fothergill not to tell Fetzer to stop work on the upgrade and to get two quotes higher than TekInsight's \$7,900 from Fothergill's friends who were web designers. Fothergill did not respond to Joyce's directive.

14. During December 2000, Joyce again asked Fothergill about getting the two higher quotes. Fothergill did not respond to Joyce's inquiry.

15. In December, Joyce allowed Fothergill to stay at his ski house and Joyce gave her a \$100 gift certificate to a nearby inn as a Christmas present.

16. On January 3, 2001, Fothergill and other ISD employees signed off on Fetzer's service report for the *mayorsfoodcourt* upgrade, indicating that the work was done.

17. On Thursday January 4, 2001, Joyce came to Fothergill's office and asked if she had obtained the two higher quotes. Fothergill replied that she had not. Joyce asked whether getting quotes was still a possibility; Fothergill said it was not. Joyce walked out. Within minutes, a Joyce administrative assistant

told Fothergill that Fothergill had a meeting with the ISD Personnel Director later that day. Fothergill had not requested to meet with the ISD Personnel Director and this was the first notice to her of the meeting.

18. According to Joyce, he does not remember the above conversations with Fothergill where he told her to get two higher quotes for the *mayorsfoodcourt* upgrade, although he acknowledges that conversations concerning additional quotes may have taken place.

19. Later on January 4, 2001, Fothergill met with the ISD Personnel Director. He informed Fothergill that Joyce was transferring her to the ISD Legal Division. Fothergill had not requested the transfer. She was to report to an assistant commissioner. Fothergill asked for two weeks to move her personal possessions. The Personnel Director, after asking Joyce, told Fothergill that she had until the next Monday to move. The next day, however, an ISD health inspector was sent to Fothergill's office with two boxes and told her she was being moved out that day. Fothergill was moved into an office with no phone or computer.

20. Prior to Fothergill's transfer to the ISD Legal Division, Joyce had recommended and Fothergill had received several promotions and salary increases, the last one occurring in November 2000. In November 2000 Joyce approved a substantial salary increase for Fothergill.

21. In January 2001, after being transferred to the ISD Legal Division, Fothergill took approximately three weeks sick leave. On January 16, 2001, Joyce received a letter from a law firm retained by Fothergill stating that Joyce's actions constituted adverse job action and change in the terms and conditions of Fothergill's employment in violation of several statutes, including G.L. c. 268A. A request was made for all documents relating to TekInsight and the *mayorsfoodcourt* upgrade.

22. In February 2001, Joyce transferred Fothergill out of the ISD Legal Division. Joyce placed Fothergill under the supervision of the assistant commissioner for Planning & Zoning.

23. On May 23, 2001, Joyce terminated Fothergill.

24. On May 30, 2001, Fothergill filed a civil suit against Joyce and the City based on retaliatory demotions and termination. In her complaint, Fothergill alleged that Joyce had attempted to manipulate the bidding system to facilitate payment to TekInsight for the work on the *mayorsfoodcourt* upgrade, and that she had been demoted and terminated in retaliation for not helping Joyce in these endeavors.

25. On September 2003, the City paid Fothergill \$240,000 to settle her wrongful termination suit.

26. The Boston Finance Committee ("the FinCom") investigated these events. On March 31, 2004, the FinCom released a report on its investigation. The FinCom found that Joyce was responsible for Fothergill's wrongful termination costing the City over \$400,000. The FinCom also found numerous administrative failures in contract and personnel matters.

27. On April 7, 2004, following the release of the FinCom report, Joyce tendered his resignation as ISD Commissioner.

#### **-Conclusions of Law-**

28. Section 23(b)(2) prohibits municipal employees from, knowingly or with reason to know, using or attempting to use their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

29. As the ISD Commissioner, Joyce was a municipal employee pursuant to G.L. c. 268A, § 1.

30. By, as ISD Commissioner, demoting and terminating Fothergill in 2001, Joyce knowingly used his ISD Commissioner position.

31. The power to demote or terminate a subordinate employee is one of the prerogatives or privileges of management, including the management of a municipal agency.

32. The privilege of using such power to demote or terminate a subordinate employee based on private or personal reasons unrelated to the merits of the subordinate's work performance is unwarranted and not properly available to managers of municipal agencies such as Joyce.

33. Where Joyce demoted and terminated Fothergill for her refusal to act as described above, namely her unwillingness to obtain bids higher than \$7,900, rather than on the merits of her work performance, Joyce used his ISD position to obtain an unwarranted privilege not properly available to him as a municipal manager.

34. This unwarranted privilege was of substantial value for Joyce because, without the power to punish his ISD subordinates for disobeying his orders to commit illegal actions, he would have lost his ability to compel his ISD subordinates to assist him in providing substantially valuable benefits to his friends, as he sought to do with Fetzer and/or TekInsight.

35. Thus, by demoting and terminating Fothergill for her refusal to act as described above, Joyce violated § 23(b)(2) on each occasion.

#### **-Resolution-**

In view of the foregoing violations of G.L. c. 268A by Joyce, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Joyce:

- (1) that Joyce pay to the Commission the sum of \$5,000 as a civil penalty for a course of conduct violating G.L. c. 268A, § 23(b)(2); and
- (2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** March 7, 2005

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<sup>1</sup> The service report states, "The undersigned customer acknowledges the work was performed and agrees that this work plus any parts will be billed to the above address." TekInsight required a signed service report before issuing an invoice. There is no dispute that the work described was in fact ultimately performed.